srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4529 OF 2007.

Ms. Vandana Keshavdutt Joshi,
Age: 27 years, R/o; Flat NO.102,
Bldg. No. A-11, Rutu Enclave,
G.B. Road, Thane(West),
Dist: Thane. ..Petitioner.

Versus.

1. Union of India,
Thr: Ministry of Labour,
New Delhi, Thr: its Secretary.

2. The Assistant Labour
Commissioner (Central) - III,
Shramraksha Bhavan, Shiv
Srushti Road, Eastern Express
Highway, Sion, Mumbai 22.

3. Standard Chartered Bank
Limited, 23-25, Mahatma Gandhi
Road, Fort, Mumbai -01
Thr: its Associate Manager,
Employee Relations. ..Respondents.

Mr. Sharad Bhattad i/b SSP Legal for the petitioner.

A. D. Shetty and R. K. Joshi for the respondent no.3.

R. C. Master for respondent nos. 1 & 2.

CORAM: S. B. MHASE &
D.G.KARNIK,JJ.

DATE: JULY 31, 2007.

ORAL JUDGMENT :

1. Rule, returnable forthwith. By consent taken up for hearing.

2. The petitioner is an employee of the respondent no.3- Bank. By an offer letter dated 27th April 2006 she was appointed as a Personal Finance

Consultant in Band 8B in Branch of the respondent no.3. By order dated 23rd June 2006 the services of the petitioner were terminated relying upon a clause in the appointment letter to the effect "the Bank reserves the right to terminate your services at any time without assigning reasons whatsoever by giving 3 months notice in writing or pay in lieu of notice". However, in the termination order it was stated that the services of the petitioner were terminated in view of improper behaviour and conduct of the petitioner with the customers, line managers and fellow colleagues.

3. Since according to the petitioner this termination order is stigmatic, she approached the respondents 1 & 2 for making a reference under the Industrial Disputes Act. The respondent no.2, by order dated 19th April 2007 informed the petitioner that though failure of Conciliation Report dated 19.10.2006 from the ALC (Mumbai) was received on the subject and there was no prima facie dispute fit for adjudication as the petitioner had not completed 240 days of continuous service. That said order is challenged by the petitioner in this petition.

4. Learned counsel for the petitioner submits that whether the petitioner had completed 240 days of service or not is german for the purpose of making of a reference because that would be a fact the effect of which would be considered by the Court. He further

submits that even though the service was less than 240 days, as the termination order was stigmatising the petitioner the Industrial dispute exists about the wrongful termination and respondent is under an obligation to make the reference. He very rightly relied upon the contents in the letter that termination of the petitioner's services was in view of the alleged improper behaviour and conduct of the petitioner with the customers, line managers and with fellow colleagues.

5. Prima facie we find that this is fit case where the reference should have been made, since no other reason has been assigned by the respondent for not making a reference. We, therefore, strike down the impugned order dated 19th April 2007 and remand the matter back to the respondent nos. 1 & 2 for consideration afresh. They are directed to consider the matter in the light of the observations in the termination order and to consider whether the reference should be made or not, irrespective of the fact that the petitioner had not completed 240 days of service. They shall take a decision whether to make a reference or not within a period of three months from today. Rule is made absolute to the extent indicated above.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**